

SUPERIOR COURT  
of the  
State of Delaware

William L. Witham, Jr.  
Resident Judge

Kent County Courthouse  
38 The Green  
Dover, Delaware 19901  
Telephone (302) 739-5332

July 15, 2011

Jason C. Cohee, Esquire  
Department of Justice  
102 West Water Street  
Dover, Delaware 19904

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Re: *State v. Phillip G. Clayville*  
C.A. No. 0909025428  
Letter Decision Upon Violation of Probation

Dear Counsel:

This is the Court's decision with reference to the Level III Violation Report submitted by the Department of Correction, Bureau of Community Correction and heard by this Court on July 8, 2011.

It is alleged that Mr. Clayville has refused to participate in sex offender treatment as deemed appropriate by his Probation Officer. In addition, on February 16, 2011, Mr. Clayville agreed to sex offender special conditions by signing the Sex Offender Conditions of Supervision. The probationer, Mr. Clayville, was to be placed in sex offender group counseling and has refused to participate in same. He has also refused to take his scheduled polygraph examination. Finally, it is alleged that he failed to show for a scheduled mental health evaluation with Mr. VanDrunen of Connections.

On November 30, 2010, trial began on the three counts of Rape Fourth Degree

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and two counts of Unlawful Sexual Contact Second Degree involving two child victims. On December 1, 2010, the Probationer entered a plea of No Contest to IK09-10-0457 and IK09-10-0458, two counts of Reckless Endangering Second Degree as lesser-included offenses. A Nolle Prosequi was entered on the remaining charges.

The Plea Agreement entered with the Court does not mention any special conditions, but does request a Presentence Investigation (PSI). This Court having reviewed and considered the PSI at sentencing along with the comments of the State and the Defendant, ordered no contact with the minor victims and for Defendant to pay all financial obligations, which the Probationer has done. It was also ordered that he receive a mental health evaluation and comply with all recommendations, counseling and treatment deemed appropriate. In addition, he was to be evaluated and participate in a sex offender program as deemed appropriate by his probation officer.

When a person pleads No Contest or *nolo contendere*, the defendant is indicating that he will not contest the allegations to the charge or charges for which he entered the plea. This has the same legal effect as a plea of guilty for sentencing purposes. *See* Black's Law Dictionary, Revised 4<sup>th</sup> Edition (1968) at page 1198.

I have considered the presentations of the State, the Defendant, and the Probation Officer. The Defendant believes that this Violation of Probation is not necessary or appropriate due to a good faith disagreement as to treatment. The Defendant still protests his guilt despite his plea. He does not believe that sex offender treatment is necessary or warranted. The State has declared that the need for a sex offender evaluation was part of the agreed upon recommendation between the Defense and the Prosecution at the time of the plea. While not clearly set forth in the written Plea Agreement, the Court's Order does reflect this condition. The conduct of the Defendant was odd and inappropriate at best, his own wife told him to stop, and a sexual deviancy issue at worst. Although this was a credibility issue at trial, I believe it is appropriate to have the Defendant evaluated for and participate in the sex offenders' program in accordance with SENTAC Guidelines, Standard Sex Offender Condition #1.

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In accordance with this determination, the Court finds Mr. Clayville in violation of his probation. The Court will restate and reimpose the original sentence order with the additional condition of zero tolerance for any deviation with the recommendations of his probation officer.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.  
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Jason C. Cohee, Esquire

James E. Liguori, Esquire

Michelle Burgess, Probation & Parole